WP(C) 932/2006

HON'BLE MR. JUSTICE RANJAN GOGOI

Mr.S.Thadau, Secretary to the Govt. of Assam, Revenue Department and Srhi M.U.Ahmed, Deputy Commissioner, Nalbari are personally present pursuant to the Court's order dated 2.5.2007. They have been heard. The information laid by the aforesaid two Officers before the Court are also taken on record.

The petitioner's father,who was an employee in the Office of the Deputy Commissioner, Nalbari, died while in service on 24.7.94. The petitioner submitted an application for compassionate appointment. By an order-dated 19.12.97 (Annexure-6) the Govt. approved the proposal for appointment of the petitioner on compassionate ground. The said order was communicated to the Deputy Commissioner, Nalbari. At that time, against one vacancy, three proposals were pending for appointment on compassionate ground. The Deputy Commissioner, Nalbari, therefore, constituted a committee to interview the three candidates. One Smti Minakshi Sarma was placed at Sl.No.1 of the merit list whereas another person Md Abdul Gafur was placed at Sl.No.2. The petitioner was placed at Sl. No.3 of the merit list. Accordingly, appointment was given to Smti Minakshi Sarma in the year 1998 against the available vacancy. Thereafter, Md.Abdul Gafur was also appointed on compassionate ground in the year 2004 against a vacancy which occurred subsequently. As the petitioner had not been appointed, the present writ petition has been instituted.

The Deputy Commissioner, Nalbari has made a statement before the Court that in the selection held by the Committee, pursuant to which the three candidates were arranged in order of merit as noticed above, the candidates were tested on the basis of their merit by taking into account the results in the qualifying examination, their general knowledge, fluency in language as well as general aptitude. Thereafter, the merit list in question was prepared. From the above statement of the Deputy Commissioner it is crystal clear that the arrangement of names of the persons eligible for compassionate appointment was made on the basis of their inter se merit.

Time and again the judicial verdict has laid down that in determining the eligibility of persons for compassionate appointment, the correct yardstick that is required to be adopted is the economic condition of the family as the object of compassionate appointment is to save the family of the deceased Govt.Servant from destitution and penury. This has been reiterated by this Court in its order dated 3.8.2006 passed by this Court in WP(c) No. 3875/05 and other connected case.

From the above it will, therefore, be clear that the arrangement of names of the three candidates for appointment on compassionate ground and the consequential appointments were made on application of a wrong principle.

Ordinarily, the Court, in the above circumstances, would have directed reconsideration /fresh consideration of the case of the petitioner against such vacancy as may be available on date as also in the future. However, the aforesaid course of action cannot be adopted by the Court as already over 13 years have elapsed since the date of death of petitioner's father. Any appointment of the petitioner, at this stage, would again be contrary to the law laid down by the Apex Court holding that compassionate appointment must be made at the earliest point of time following the death of the Govt Servant.

The petitioner has apparently been wronged by application of an incorrect principle of selection, a fact evident from what has been stated above. His right to a just and fair consideration of his case for compassionate appointment has, indeed, been impaired. Yet, on account of the long efflux of time, the case of the petitioner cannot be directed to be reconsidered.

The law cannot be understood without any remedy where a legal right has been breached. Payment of compensation as a remedy for a wrong done which cannot be otherwise repaired or remedied is an acceptable alternative which this Court will be fully empowered to grant in exercise of its jurisdiction in the domain of public law if the beneficiary of such compensation is so entitled. However, in the present case there will always be some difficulty in determining the petitioner's entitlement to compensation. This is because even on an application of the correct principles for selection for compassionate appointment the petitio

ner may or may not have been appointed. Any such determination at this belated s tage, even if for the purpose of computation of compensation will hardly be a vi able alternative. What was the economic condition of the families of the prospec tive job seekers at the relevant point of time, which is almost a decade back, c an hardly be answered in a correct and objective manner today. Therefore, taking into account the breach that has occurred and the fact that the petitioner's en titlement to appointment cannot be directed to be reconsidered due to efflux of time, I am of the view that a compensation package of Rs.1,00,000.00 (Rupees one lakh) to be paid to the petitioner within a period of 3 (three) months from to day by the State would adequately meet the ends of justice. In working out the aforesaid compensation amount the Court has restrained itself to the quantum of wages for roughly one year of service that the petitioner would have earned had he been appointed.

It is further directed that if the amount of compensation awarded by the Court is not paid within the time schedule framed, the said amount will carry i nterest @ 9% which the Court understands to be the highest rate of interest paya ble on Bank deposits at present.

Consequently and in light of the foregoing discussions, the writ petitio n is allowed to the extent indicated above.